Federal Court  Cour fédérale

Date: 20171025

Docket: IMM-1082-17

Citation: 2017 FC 948

Ottawa, Ontario, October 25, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ROLAND HOMENSZKI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of Hungary who claims having experienced persecution in Hungary due to its Roma ethnicity throughout his entire life, including racism and harassment from right-wing extremists. He is challenging the reasonableness or legality of a negative Pre-Removal Risk Assessment [PRRA] decision of a Senior Immigration Officer [Officer] dated January 25, 2017. The Officer found that the applicant did not meet the definition of a Convention Refugee or person in need of protection, pursuant to sections 96 and 97 of the

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA], as he provided insufficient evidence to show that he is more likely than not to face persecution, or that there is a personalized risk should he return to Hungary.

[2] The applicant fled Hungary for Canada in 2001 after allegedly suffering from a serious attack by Neo-Nazis which left him severely injured. He filed a first claim in Canada in 2003. He was then represented by a lawyer apparently known to mishandle Roma refugee claims. The claim was denied, which led to his departure to Hungary in 2003. He now claims the situation has deteriorated: he could not find work, had difficulty finding housing and feared Neo-Nazi groups who targeted Roma in Miskolc, his home town. He experienced the same abuse in Debrecen where he lived between 2006 and 2008. In December 2013, the applicant and his wife moved to Miskolc where systematic targeting of Roma allegedly begun. The applicant claims being beaten up by Neo-Nazis in April 2016. He did not go to the hospital due to his lack of insurance, and did not approach the police because of police brutality against Roma. In August 2016, the applicant and his family were evicted from their home, and all experienced some violent treatment. The applicant brought his wife to the hospital since she was allegedly bleeding, and she was only registered as a "high-risk pregnancy." When going back to the hospital with further bleeding, she would have been told to come back when the baby was ready to be born. The family was able to seek shelter with a relative, but could not register the child in school due to their lack of a legal address. After seeking help from the Roma Minority Council, the applicant was provided with food, but was also advised to leave the country, since Children's Aid would likely come and get the children, after being notified by the authorities of the family's homelessness. As such, the applicant and his family left for Canada in September 2016. They all

made refugee claims. In light of his previous demand, he was unable make a second refugee claim, and was therefore issued a deportation order in September 2016. He submitted a PRRA application which was dismissed on January 25, 2017 and is the object of the present judicial review.

[3] The applicant seeks review of the impugned decision essentially because the Officer erred in his assessment of personalized risk and availability of state protection, while he failed to consider whether an oral hearing was appropriate. The respondent submits that, overall, this case rests on mere disagreements with the way the Officer weighed the evidence, while there was no obligation to conduct an oral hearing.

[4] The present application is dismissed. The impugned decision is reasonable. Whether the issue related to the failure to convoke an oral hearing is examined under the correctness or the reasonableness standard, there is no reason to intervene.

[5] On a preliminary note, the Officer stated the substandard representation that the applicant received from his previous lawyer should not be considered for this assessment, adding that the applicant had had ample opportunity to amend his Personal Information Form [PIF] or correct his testimony at the time of the initial claim. While the Officer’s last remark is somewhat questionable, its conclusion is not unreasonable since it is not the PRRA Officer’s mandate to review any adverse finding made in 2003 by the Refugee Protection Division [RPD] as a result of bad counsel representation.

[6] Be that as it may, the applicant submits the Officer failed to consider that an oral hearing was required as per section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The applicant admits that the Officer did not expressly find a lack of credibility, but suggest that one is nonetheless made implicitly. I agree with the respondent that an oral hearing was not required. In fact, the Officer made no credibility findings; instead, he was simply weighing the evidence of risk, and reasonably found it insufficient. There is nothing in the impugned decision that indicates that the Officer implicitly made credibility findings.

[7] Before this Court, the applicant focused most of his attack on the reasonableness issue. The applicant submits that the Officer ignored relevant evidence or otherwise failed to provide sufficient reasons for finding that the applicant did not face a personalized risk that he would not be persecuted because he is a Roma and that there was adequate state protection. The respondent replies that the Officer considered all relevant evidence and provided sufficient reasons for supporting its conclusion that the applicant has provided insufficient evidence to show that he is more likely than not to face persecution, or that there is a personalized risk should he return to Hungary. I agree with the respondent.

[8] In the case at bar, the Officer specifically considered the applicant's allegation of being beaten up in April 2016, and his subsequent refusal to go to the hospital or the police. The Officer notes that more had to be done for the applicant to avail himself of state protection in a democratic state like Hungary. The applicant had to do more than simply show that he went to some police officers and that his efforts were unsuccessful. Evidence indicated that, although not perfect, Hungary can provide adequate protection if the applicant seeks it. Furthermore, the

Officer specifically examined the evidence related to the forced eviction in Miskolc. He acknowledged that the city and the government started an eviction process in 2014 and property was demolished in 2016. Yet, he concluded that the applicant has failed to provide evidence that he was personally targeted during the city wide evictions and demolition campaign. Evidence also showed that the applicant was made aware of the eviction a year in advance. With respect to the violence suffered in the course of the eviction, the Officer noted that the applicant's family did not seek medical attention, except for his wife, while the latter's record does not indicate trauma or bleeding. She was indeed not refused medical attention despite her Roma ethnicity. The Officer also specifically considered the risk of homelessness upon return to Hungary. He concluded that no objective evidence was filed to support statements that, even if the applicant finds an apartment upon his return, he will be subject to evictions, and then will be homeless and vulnerable to attacks from extremists and police and subject to arbitrary fines and imprisoned. The Officer also concluded that the evidence was insufficient to convince him that far-right extremist activity and hatred against the Roma was on the increase. The Officer acknowledged that the articles submitted speak of incidents of violence and discrimination against the Roma in Hungary, but could not be convinced that the applicant would personally risk such treatment.

[9] Overall, the Officer acknowledged the applicant's difficult situation in Hungary, but found that he had provided insufficient objective evidence that he experienced serious systematic and repetitive discrimination amounting to persecution. Plus, the evidence showed that state protection was reasonably available and effective. The applicant has not discharged the presumption that the State of Hungary is capable of protecting his nationals in light of the

functioning state apparatus. This conclusion is supported by the evidence on record and is not unreasonable in the Court's opinion. The arguments made by the applicant are unfounded.

[10] The applicant argues that the Officer has engaged in a selective analysis of the country conditions and that the Officer's findings are based on speculation or not supported by the evidence on record, such as the fact that the applicant can go to the police; that there have been moderate improvements with respect to controlling far-right extremist activity; that the government has deployed numerous initiatives to counter racism and discrimination against the Roma population; and that the applicant has not provided objective evidence with respect to the increased risk faced by homeless people. In the Court's opinion, there was no selective analysis of the evidence. Indeed, the Officer was allowed to conclude that the evidence was not sufficient to show that the discrimination against Roma did not amount to persecution and that the applicant had failed to prove that he was personally at risk. The Officer did not need to refer to every piece of evidence submitted for his decision to be reasonable. With respect to homelessness and the risk of far-right extremism, the reasons attest consideration of the issue. The Officer actually acknowledged that the articles submitted speak of incidents of violence and discrimination against the Roma in Hungary.

[11] I agree with the respondent that the present attack is merely a disagreement on the interpretation of conflicting documentary evidence respecting the country conditions in Hungary. The Officer could very well accept that the evictions occurred, and yet still reject the fact the applicant was personally targeted. The Officer could also conclude that city-wide evictions did not amount to persecution. In any event, the Officer concluded that the applicant has not rebutted

the presumption of state protection. This finding is not unreasonable. The state protection does not need to be perfect, as long as it is adequate. This is a question of fact within the realm and specialized expertise of the Officer. Indeed, looking at the evidence, the Officer found that, despite clear incidents of discrimination against the Roma, the State of Hungary was making efforts to bring about changes. As a democratic state, Hungary is presumed capable of protecting its nationals. I am satisfied that the Officer based this decision on the evidence submitted: he actually specifically referred to the articles and the 2015 USDOS Human Rights Report.

[12] As stated by the Federal Court of Appeal in *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 41 [*Hinzman*], "refugee protection is meant to be a form of surrogate protection to be invoked only in those situations where the refugee claimant has unsuccessfully sought the protections of his home state" (see also *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 709, 103 DLR (4th) 1 [*Ward* cited to SCR]). There is presumption that States are capable of protecting their citizens – particularly when the State is democratic (see *Ward* at 725; *Hinzman* at 54; *Canada (Minister of Employment and Immigration) v Villafranca*, 99 DLR (4th) 334 at 337, 1992 CanLII 8569 (FCA)). To rebut the presumption, "clear and convincing confirmation of a state's inability to protect must be provided" (see *Ward* at 724). This presumption applies equally to cases where an individual claims to fear persecution by non-state entities, like far-right extremist groups, and to cases where the State is alleged to be a persecutor (see *Hinzman* at para 54). As such, "the fundamental requirement in refugee law that claimants seek protection from their home State before going abroad to obtain protection through the refugee system" (*Hinzman* at para 62). "[…] In the case of a developed democracy, the claimant is faced with the burden of proving that he exhausted all the possible protections

available to him" (see *Hinzman* at para 57; see also *Canada (Citizenship and Immigration) v Kadenko*, 143 DLR (4th) 532, 1996 CanLII 3981 (FCA) [*Kadenko* cited to DLR]).

[13] As a final note, the applicant did not submit any evidence that he ever sought state protection: he never attempted to complain to the police after the violent attacks, nor did he take any other steps to get state help. The reason for this was that the police attacks Roma. When dealing with a State that has functioning political and judicial institutions, the refusal of certain police Officers to take action cannot in itself make the State incapable of doing so (see *Kadenko* at 534). As such, the Officer could reasonably conclude that the applicant did not rebut the presumption of adequate state protection in Hungary: he did not show that he exhausted all the possible protections allowed to him. This issue is therefore determinative of the case, regardless of the Officer's analysis of Hungary's efforts to protect Roma. I must therefore conclude that the Officer's assessment of the availability of state protection was reasonable.

[14] For the above reasons, the present judicial review application is dismissed. There is no question of general importance warranting certification.

JUDGMENT in IMM-1082-17

THIS COURT'S JUDGMENT is that the present application for judicial review be dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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